

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:	)
	)
<b>3M Company</b>	)
Decatur, Morgan County, Alabama	)
Air Facility ID No. 712-0009	)
	)

**CONSENT ORDER NO. \_\_\_\_\_**

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and 3M Company (hereinafter, “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee is the owner and/or operator of a chemical production facility (hereinafter, the “Facility”) located in Decatur, Morgan County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n), (2006 Rplc. Vol.), the Department is the State air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, (2006 Rplc. Vol.).

4. On July 7, 2008 the Permittee was issued Title V Permit Number 712-0009 (hereinafter, the "Permit").

5. General permit proviso No. 16 of the Permit states:

All pollution control devices and capture systems for which this permit is issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants shall be established.

6. Unit specific proviso No. 2 of the Applicability section in the Operating Summary No. 24 of the Permit states:

This source is subject to the applicable requirements of the National Emission Standards for Miscellaneous Organic Chemicals, 40 CFR Part 63, Subpart FFFF.

#### ***DEPARTMENT'S CONTENTIONS***

7. On May 12, 2011, the Department received an e-mail notification from the Permittee concerning a release of approximately 1,300 pounds of methyl tert butyl ether from Chemical Building No. 3 at the Facility. The Department requested and received from the Permittee additional information about this release, including actions the Permittee took to minimize emissions.

8. On May 18, 2011, the Department received an e-mail notification from the Permittee concerning a release of approximately 128 pounds of methyl isobutyl ketone in wastewater released from the Facility to the sewer, however, based on subsequent information from the Permittee, an estimated 31 pounds was released to the air. The Department requested and received from the Permittee additional information about this release, including actions the Permittee took to minimize emissions.

9. On May 25, 2011, the Department received an e-mail notification from the Permittee concerning a release of approximately 2,500 pounds of ethylene glycol from Resin Building 19 at the Facility. The Department requested and received from the Permittee additional information about this release, including actions the Permittee took to minimize emissions.

10. On August 11, 2011, the Department issued a Notice of Violation (NOV) to Permittee for events listed above in Paragraphs 7-9.

11. On September 19, 2011, the Department received Permittee's written response to the August 11, 2011, NOV. The response, dated September 9, 2011, stated that Permittee performed a root cause analysis and investigations for each of the situations and had identified and implemented corrective action to prevent these situations from recurring.

12. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers Permittee's failure to minimize emissions and failure to follow the requirements of the MON MACT to be serious

violations. The Department is not aware of any irreparable harm to human health or the environment as a result of these alleged violations.

B. THE STANDARD OF CARE: The Department finds that Permittee did not exhibit a sufficient standard of care since adequate measures were not in place to prevent these releases.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: It is the Department's understanding that the Permittee likely derived little, if any, economic benefit from its non-compliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Permittee reported these events in a timely manner, and corrected the issues upon discovery of the events.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of previous violations for these types of incidents.

F. THE ABILITY TO PAY: Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty to resolve this matter amicably, without incurring the unwarranted expense of litigation.

13. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

14. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***PERMITTEE'S CONTENTIONS***

15. The Permittee conducted a root cause analysis and investigation for each of the events. The Permittee made the following efforts to minimize air emissions from the release of methyl isobutyl ketone in wastewater: the wastewater was routed to a state of the art, closed sewer system and transported to the facility onsite biological treatment system (control) which has a very high destruction efficiency for this chemical. While this is not the method that the facility is using for MACT wastewaters, biological treatment is an acceptable control technology for the NESHAP/MACT regulation in question. The Permittee made the following efforts to minimize air emissions from the release of ethylene glycol: glycol was being transferred for kettle cleanup, and five minutes into the transfer the operator noticed vapor from the area. The operator immediately stopped the transfer, and vented the kettles through the process condenser (control). The operator's quick response minimized emissions by 69% from what might otherwise have been released. Permittee has also provided to the Department information on the Permittee's corporate programs and actions to try to minimize and avoid releases.

16. Permittee neither admits nor denies the Department's contentions. In specific, Permittee disagrees that the equipment involved in release described in paragraph 7, page 2, is a capture system and control device; and it is not subject to a requirement for a capture system and control device for purposes of General Permit Proviso 16. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

## **ORDER**

THEREFORE, Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Permittee agree to enter into this ORDER with the following terms and conditions:

A. Permittee shall pay the Department a civil penalty in the amount of \$6,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. Permittee shall comply with the terms, limitations, and conditions of the ADEM Admin. Code 335-3 and Permit immediately upon the effective date of this Consent Order and continuing every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each

signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the

work was delayed because of conditions beyond the control and without the fault of Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and Permittee agree that this Consent Order shall not affect Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to



be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

3M COMPANY

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Date Signed: \_\_\_\_\_

Date Executed: \_\_\_\_\_

## Attachment A

### 3M Company Decatur, Morgan County Facility No. 712-0009

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Failure to operate capture system so as to minimize emissions.	2	\$ 2,000.00	\$ 2,000.00	\$
Failure to control emissions from wastewater stream according to 40 CFR Part 63, Subpart FFFF.	1	\$ 2,000.00	\$ 2,000.00	\$
<b><i>TOTAL</i></b>	<b><i>3</i></b>	<b><i>\$ 4,000.00</i></b>	<b><i>\$ 4,000.00</i></b>	<b><i>\$</i></b>

#### Economic Benefit

<b>Mitigating Factors</b>	<b>\$ -2,000.00</b>
<b>Ability to Pay</b>	<b>\$ -</b>
<b>Other Factors</b>	<b>\$ -</b>
<b>CIVIL PENALTY</b>	<b>\$ 6,000.00</b>

#### Footnotes

\* See the "Findings" of the Order for a detailed description of each violation and penalty factors